



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.09.2015

CORAM:

THE HONOURABLE MR.JUSTICE **S.NAGAMUTHU**

and

THE HONOURABLE MR.JUSTICE **V.S.RAVI**

H.C.P(MD)No.1279 of 2015

and

MP(MD)No.1 of 2015

P.Ganesan

.. Petitioner

Vs.

1.The Superintendent of Police,
Theni District.

2.The Inspector of Police,
Devathanapatti Police Station,
Theni District.

3.P.Kamaraj

4.K.Palani Thevar

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, directing the respondents 1 and 2 to produce the body or person of the detainee, by name, Thabasu Vetha, aged 16 years, D/o.Ganesan [petitioner] before this Court and hand over to the custody of the petitioner.

For petitioner : Mr.M.Sarangan
For respondent Nos.1&2 : Mr. K.S.Duraipandian
Additional Public Prosecutor

For Respondent Nos.3&4 : No Appearance

: Mr.M.A.M.Raja
for proposed fifth respondent

ORDER

[Order of the Court was made by **S.NAGAMUTHU, J.**]

The petitioner is the father of one minor Thabasu Vetha, aged hardly 16 years. The wife of the petitioner is one Mrs.Jothi. According to the petitioner, Ms.Thabasu Vetha is studying in 11th standard in Kamalapuram Dhiraviyam Girls Higher Secondary School. It is the further case of the petitioner that Ms.Thabasu Vetha was kidnapped by the respondents 3 and 4. On the complaint made by the petitioner, a case was registered in Crime No.452 of 2015 for girl kidnapped. As Ms.Thabasu Vetha was not rescued by the police, the petitioner has come up with the present Habeas Corpus Petition seeking appropriate direction.



2. When the Habeas Corpus Petition came up for admission, on 01.09.2015, this Court issued notice to the respondent Nos.3 and 4. Mr.K.S.Duraipandian, the learned Additional Public Prosecutor, took notice for the official respondents. The matter was adjourned by two weeks. Thereafter, on 15.09.2015, when the Habeas Corpus Petition was taken up for hearing, the girl was not produced and instead, the official respondents took time. The matter was again adjourned.

3. In the meanwhile, M.P.[MD].No.1 of 2015 came to be filed by one Mrs.Vellathai, W/O.Mr.K.Palani Thevar, representing Ms.Thabasu Vetha seeking to implead the detinue - Ms.Thabasu Vetha as the fifth respondent in the Habeas Corpus Petition. The said Miscellaneous Petition has been supported by an affidavit, wherein Mrs.Vellathai has stated that the father of the petitioner had a plan to give the minor girl - Ms.Thabasu Vetha in marriage to a old man. This was not to the liking of the detinue and therefore, finding no option, she left her parental home and came to the house of Mrs.Vellathai. Thus, according to her, the detinue has been in her custody on her own volition. She has further stated in the affidavit that the complaint made to the police is absolutely false and the same has been made with a view to wreck vengeance out of enmity. Ultimately, in the petition, the prayer made is to implead the minor Ms.Thabasu Vetha as the fifth respondent in the Habeas Corpus Petition.

4. Today, in the morning session, when the Habeas Corpus Petition and the Miscellaneous Petition were taken up for hearing, the minor girl - Ms.Thabasu Vetha was produced by Mrs.Vellathai. This Court enquired the detinue. She reiterated the averments made in the affidavit that the petitioner made arrangement to give her in marriage to a old man, which is not to her liking. Therefore, she had gone out of the parental home. She had expressed her desire not to go with her parents and instead, she stated that she would like to remain in a governmental home. The petitioner and his wife - Mrs.Jothi, who were present before this Court, were found in tears. They pleaded that they never made arrangement for such marriage. They further stated that they are interested only in educating her and till she attains majority, they have no plan to give her in marriage to anybody.

5. Having considered the above rival submissions made before this Court and also considering the larger interest of the entire family, including the minor girl, this Court referred the matter for mediation. Accordingly, the minor girl was directed to be produced before the Mediation Centre by the second respondent.

6. Now, when the matter was taken up at 04.30 PM, the minor girl has been again produced by the second respondent. The petitioner and his wife were present. Mrs.Vellathai, W/o.Mr.K.Palani Thevar has not made appearance now. It needs to be mentioned that when the matter was taken up in the morning session, Mrs.Vellathai has chosen to appear before this Court.



7. The petitioner would submit that the fourth respondent - Mr.P.Kamaraj is the son of Mrs.Vellathai. It is further stated that few years back, Mr.P.Kamaraj and Mrs.Vellathai approached him and wanted him and his wife to make arrangement for the marriage between the fourth respondent and the minor Ms.Thabasu Vetha. Since the petitioner and his wife were not agreeable for the same, they have kidnapped the minor girl.

8. The learned Additional Public Prosecutor would submit that the investigation has revealed that the minor girl - Ms.Thabasu Vetha has been kidnapped by the accused. Therefore, the case has been altered into one under Section 366(A) of the Indian Penal Code and the same is under investigation. He would further submit that the respondent No.4 is still absconding and therefore, he could not be arrested. He would further submit that Mrs.Vellathai has approached this Court and obtained anticipatory bail. The said statement made by the learned Additional Public Prosecutor is recorded.

9. The learned counsel appearing for the impleading respondent would submit that the custody of the minor girl may be entrusted to Mrs.Vellathai. In our considered view, the custody of the minor girl cannot be entrusted to Mrs.Vellathai, who is an accused in the case. In the mediation report, it has been stated that the matter has been settled between the minor girl - Ms.Thabasu Vetha and her parents. It is further stated in the report that the minor girl is willing to go with her parents and to be in their custody. The petitioner and his wife made an assurance before this Court that they would give full protection to her for her safe custody and they would not cause any harm to her.

10. In our considered view, whether the minor girl was kidnapped and whether any offence has been committed by any one against her or not is a matter for investigation and therefore, we do not want to express any opinion regarding the same. We leave it open to the Investigating Officer to proceed with the matter in accordance with law. The Investigating Officer is at liberty to interrogate her and make arrangement for medical examination also.

11. In view of all the above, the Habeas Corpus Petition is disposed of recording the mediation report and entrusting the custody of the minor girl - Ms.Thabasu Vetha to the petitioner - Mr.P.Ganesan and his wife - Mrs.Jothi for safe custody. It is directed that the petitioner and his wife shall give her protection and they shall not cause any harm either physically or mentally to her. Connected M.P. (MD) No.1 of 2015 is closed.

Sd/-

Assistant Registrar (Per.Admn.)

/True Copy/



To:

1. The Superintendent of Police,
Theni District.
2. The Inspector of Police,
Devathanapatti Police Station,
Theni District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.M.Sarangan, Advocate SR.No.57871
+1cc to Mr.M.A.M.Raja, Advocate Sr.No.57359

akm/15.10.15 /4p-6c/

ORDER MADE IN
H.C.P (MD) No.1279 of 2015
29.09.2015